

**TERMINAL DISCLAIMER TO OBTAIN A PROVISIONAL DOUBLE PATENTING  
REJECTION OVER A PENDING "REFERENCE" APPLICATION**

Docket Number (Optional)  
62072(51590)

In re Application of: Yuri A. Kolesnikov et al.

Application No.: 09/806,645-Conf. #3048

Filed: July 12, 2001

For: TOPICAL COMPOSITIONS COMPRISING AN OPIOID ANALGESIC AND AN NMDA  
ANTAGONIST

The owner\*, Memorial Sloan-Kettering Cancer Center, of 100  
percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of  
any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any  
patent granted on pending **reference** Application Number 10/823,365, filed on April 13, 2004,  
as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said **reference** application may  
be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending **reference** application. The owner  
hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it  
and any patent granted on the **reference** application are commonly owned. This agreement runs with any patent granted on  
the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that  
would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of any patent granted on said  
**reference** application, "as the term of any patent granted on said **reference** application may be shortened by any terminal  
disclaimer filed prior to the grant of any patent on the pending **reference** application," in the event that: any such patent: granted  
on the pending **reference** application: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a  
court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims  
canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term  
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Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency,  
etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on  
information and belief are believed to be true; and further that these statements were made with the knowledge that willful false  
statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United  
States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record. Reg. No. 41,281

/Mark D. Russett/ November 4, 2009  
Signature Date

Mark D. Russett, Reg. No. 41,281  
Typed or printed name

(617) 239-0100  
Telephone Number

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) is included.

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\*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).  
Form PTO/SB/96 may be used for making this statement. See MPEP § 324.

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing  
system in accordance with § 1.6(a)(4).

Dated: November 4, 2009

Electronic Signature for Mark D. Russett, Reg. No. 41,281: /Mark D. Russett/